



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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w/enclosure
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NOV 24 2000

REPLY TO THE ATTENTION OF:
R-19J

Lori F. Kaplan, Commissioner
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46206

Dept. of Environmental Mgmt.
Commissioner's Office

Dear Ms. Kaplan:

DEC 04 2000

Thank you for your October 30, 2000, letter regarding Indiana's activities to adopt rules to address oxides of nitrogen (NOx) controls in response to the NOx State Implementation Plan (SIP) Call (NOx SIP Call). We appreciate the significant effort that Indiana is making to revise the SIP. My staff is reviewing your draft NOx rule against the criteria in the NOx SIP Call and has also been working to answer questions that you and other States have raised.

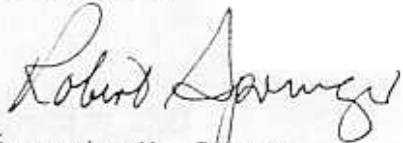
In response to questions received from States, the United States Environmental Protection Agency has just recently released a list of questions and answers that will be helpful for you as your rulemaking progresses. I have enclosed that information for your use.

I would also like to note that, in addition to adopted State rules, there are several other elements that will need to be submitted in order for us to be able to take rulemaking action on your SIP. For example, in order to determine that your rules meet the requirements of the SIP Call, Indiana is also required to submit a demonstration that these rules, coupled with Clean Air Act controls and other State SIP measures, ensure that Indiana will meet the State's NOx SIP Call emission budget in 2007. Also enclosed is a "NOx Sip Call Checklist" which provides more detail on the 40 CFR Part 51 and 96 requirements for a NOx SIP Call SIP submission.

cc: Janet MC
Tim Method
w/enclosure

We look forward to continuing to work with you in processing the NOx SIP Call SIP and we appreciate your efforts. Indiana's adoption and submission of a NOx SIP is a significant step toward reducing ozone in Indiana and in the eastern half of the country. If you have questions, please contact me or Ryan Bahr, Environmental Engineer, of my staff, at (312)353-4366.

Sincerely,


for Francis X. Lyons
Regional Administrator

Enclosures

Enclosure 1: QUESTIONS ON TRADING AND SIPS FROM STATES

BACKGROUND: On August 30, 2000 the D.C. Circuit Court ordered that the NOx SIP call compliance date be moved from May 1, 2003 to May 31, 2004. In light of the Court's action, States are approaching EPA about how the changed compliance date impacts the NOx SIP call trading program and how the change affects interaction with the section 126 program.

COMPLIANCE DATE AND THE TRADING BUDGET

- Section 126 sources have to comply beginning May 1, 2003 while NOx SIP and NOx FIP sources are not required to comply until May 31, 2004. Would sources be required to comply with more than one program in 2004?

Draft answer: No, EPA does not plan to have two sets of trading program budgets and allocations in place in 2004. The Agency will determine what program will have primacy after the resolution of the section 126 litigation and after EPA has determined whether a SIP or a FIP applies in each affected State.

- Will EPA pro-rate the budgets in 2004 to reflect the fact that the budgets represent emissions over a five month ozone season and the 2004 compliance period is only four months?

Draft answer: No, EPA will not pro-rate the budgets. In 2004, NOx SIP and NOx FIP sources will receive 5 months of allowances for use over a four-month compliance period. However, beginning the SIP call reductions 13 months later and providing 5 months of allowances for the 4-month compliance period in 2004 will extend the time it will take the region to achieve a 0.15 lb/mmBtu effective emissions rate. Therefore, States relying on the NOx SIP call for other purposes, such as attainment demonstrations, may want to consider submitting SIPs with a May 1, 2004 compliance date.

- In 2004, can sources under the NOx SIP call or NOx FIP with a 4-month compliance period trade with sources under section 126 with a 5-month compliance period? Likewise, can sources in partial section 126 States, where some sources are required to comply for the full ozone season in 2004 and some are required to comply for only four months in 2004, trade with each other?

Draft answer: Yes, sources with different compliance periods may trade with each other in 2004. Allowing trading is appropriate given our intent to create a single unified trading program.

COMPLIANCE SUPPLEMENT POOL

- With the SIP call compliance date moved to May 31, 2004, will sources be allowed to count early reductions made in 2003?

Draft answer: Yes, for sources not subject to the section 126 requirements in 2003 or to a SIP with a compliance date of May 1, 2003. (Rewarding sources that are already complying with the section 126 or the NOx SIP call rules with early reduction credits for reductions made in 2003 would be double-counting the reductions. The sources are already receiving credit for reductions made to comply with the section 126 or the NOx SIP call rules.) The NOx SIP call currently allows sources that make early reductions during the 2001 and 2002 ozone seasons to receive credit for those reductions with allowances from the compliance supplement pool. In light of the Court's extension of the compliance date to May 31, 2004, EPA believes it is reasonable to interpret our rules to allow reductions made during the 2003 ozone season in non-126 affected sources to be eligible for early reduction credits.

- Will the use of compliance supplement pool allowances be extended to 2005?

Draft answer: Yes. In light of the D.C. Circuit's decision, EPA believes it is appropriate to interpret our rules to extend the use of the pool allowances to 2005. Therefore, compliance supplement pool allowances may be used for compliance in 2004 and 2005. While EPA did not and does not expect any problems with electricity reliability as a result of the SIP call, EPA created the compliance supplement pool for the initial two years of the trading program to address commenters' concerns regarding electricity reliability. Thus, extending the use of the pool allowances to 2005 remains consistent with the original intent of the pool.

Moreover, the number of surplus allowances sources that could potentially carry-over into 2005 is the same regardless of whether the compliance supplement pool allowances expire in 2004 or 2005. If the pool allowances expired in 2004, sources could use all of the pool allowances for compliance in 2004 and bank their 2004 vintage allowances for use in future years.

- Will EPA pro-rate the compliance supplement pool to reflect the shorter control period in 2004?

Draft answer: No, the pool will not be adjusted to account for the shorter 2004 compliance period.

- Will the size of the partial States' compliance supplement pools be adjusted?

Draft answer: Under Phase I of the NOx SIP call, Alabama and Michigan have the option of submitting SIPs that include only the fine grid portion of their States. If they submit a partial State SIP, their compliance supplement pools will be adjusted accordingly. In the Phase II rulemaking, EPA expects to propose a partial State compliance supplement pool of 8,962 tons for Alabama and 9,907 tons for Michigan. (AL's full State compliance supplement pool is 11,678 tons. MI's full State compliance supplement pool is 11,356 tons.) In the Phase II rulemaking, EPA also expects to propose that only the fine grid portion of Georgia and Missouri would be required to comply with the NOx SIP call (Georgia and Missouri are not required to submit Phase I SIPs). Therefore, EPA will also propose partial State compliance supplement pools for those two States (10,728 tons for Georgia and 5,630 tons for Missouri).

- For States subject to section 126 in 2003 and the NOx SIP call in 2004, will there be two separate compliance supplement pools?

Draft Answer: No. The compliance supplement pool was originally created for potential use by sources that are subject to either the section 126 or the NOx SIP call and that may have difficulty complying with the reductions requirements under whichever rule applies to them in 2003. Under section 126, the allowances in the compliance supplement pool will be distributed by May 1, 2003 to sources that make early reductions. Under the NOx SIP call, States have the option of distributing the pool allowances, by May 31, 2004, for early reductions, and/or directly to sources that demonstrate a need. Thus in States with a SIP call compliance date of May 31, 2004, there is the potential for sources to receive compliance supplement pool allowances under both section 126 and the NOx SIP call. However, EPA does not intend to have two separate pools per State, one for section 126 and one for the SIP call. This would lead to a doubling of available allowances under this provision. Therefore, EPA will work with States affected under both section 126 and the NOx SIP call to distribute the compliance supplement pool allowances.

MONITORING AND REPORTING

- Will the initial 2002 monitoring and reporting requirements be moved to 2003?

Draft answer: Yes. The new deadline for certification of sources affected by the SIP call (but not section 126) will be 2003. Section 126 affected sources still must comply with May 1, 2002 monitoring deadlines.

- Will the monitoring and reporting requirements begin on May 1 or May 31, 2003?

Draft answer: Monitoring and reporting requirements will begin on May 1, 2003, to remain consistent with existing Part 75 requirements. Additionally, the data in 2003 and 2004 will be used to help determine allocations from 2008 to 2012 so data are needed for the entire ozone season. Section 126 affected sources still must comply with May 1, 2002 monitoring deadlines.

- Note: EPA intends to change the dates for the compliance supplement pool and monitoring and reporting deadlines through notice and comment rulemaking as part of its action on State SIP submittals.

Enclosure 2:

October 11, 2000

EPA is issuing this phase I checklist as a guide to Regions in reviewing SIP Call SIP submissions. It may also be helpful to States in preparing those submissions. The checklist includes both completeness and approvability criteria for the submissions; in addition, Regions should refer to the completeness criteria set forth in Appendix V to 40 CFR Part 51.

NOx SIP Call Checklist (For Phase I)

1. Budget Demonstration

1.1 Does the SIP revision contain the baseline inventory for NOx mass emissions from EGU (phase I sources do not include cogeneration units), non-EGU, area, highway and non-road mobile sources in the year 2007 as specified in section 51.121(g)(2)? This does not include I.C. engines for phase I. 40 CFR 51.121(g)(2)(i)

1.2 Has the state certified that it has implemented all of the control measures assumed by EPA in developing the baseline 2007 inventory? 40 CFR 51.121(g)(2)(i)

If not, EPA may direct the State to adjust the baseline 2007 inventory. id

1.3 Does the SIP revision have a 2007 projected inventory that demonstrates that the new State control measures, along with the measures assumed in the baseline 2007 inventory, will achieve the EPA assigned [see § 51.121 (e)(2)] phase I State budget in 2007? 40 CFR 51.121(b)(1)(i), 51.121(g)(1), and 51.121(g)(2)(iii)

1.4 Does the SIP revision project the 2007 emissions expected after implementation of each control measure compared to the baseline 2007 inventory for the subject sources if the new control measure was not implemented? 40 CFR 51.121(g)(2)(iii)

Does EPA find the projections to be reasonable?

1.5 Are computations, assumptions, and judgments used by the State to determine its projected 2007 NOx mass emissions following implementation of the control measures included with the SIP revision? 40 CFR 51.121(g)(2)(iii)

Does EPA find the computations to be accurate and the assumptions and judgments to be reasonable?

1.6 Does the revision identify the sources of the data used by the State in projecting the emissions reductions achieved through implementation of each and all of the control measures? 40 CFR 51.121(g)(2)(iv)

Does EPA find the sources of the data used to be appropriate?

- 7 Has the State indicated whether or not it intends to use the compliance supplement pool?
40 CFR 51.121(e)(3)
- 1.8 Does the SIP submission provide for and describe the mechanism(s) to be used for distribution of the compliance supplement pool, if a State allows use of credits from the State's compliance supplement pool? 40 CFR 51.121(e)(3)(iv)

If yes,

- (a) Do the SIP rules ensure that the State will not issue more credits than are contained within its Compliance Supplement Pool? 40 CFR 51.121(b)(2)(ii)(B) and 51.121(e)(3)(i)

Are the mechanisms for distribution of the State's compliance supplement pool limited to the early reduction credit methodology and/or the direct distribution methodology described below? 40 CFR 51.121(e)(3)(iv)

If the SIP submission provides for and describes an early reduction credit methodology:

Does the SIP rule require that the State shall complete the early reduction credit issuance process by no later than May 1, 2003? 40 CFR 51.121(e)(3)(iv)(A)(1)

Does the early reduction credit methodology ensure that the reductions for which credit is given are not required by the State's SIP or otherwise required by the CAA? 40 CFR 51.121(e)(3)(iv)(A)(2)

Does the early reduction credit methodology ensure that the reductions will be verified by the source as having actually occurred during an ozone control season between September 30, 1999 and May 1, 2003 and ensure that the reductions are quantified according to procedures set forth in the SIP revision and approved by EPA? 40 CFR 51.121(e)(3)(iv)(A)(3) and 51.121(e)(3)(iv)(A)(4)

Does the early reduction credit methodology ensure that the reductions implemented by sources serving electric generators with a nameplate capacity greater than 25 MW or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr are quantified according to 40 CFR part 75, subpart H, requirements? 40 CFR 51.121(e)(3)(iv)(A)(4)

If the SIP submission provides for and describes a direct distribution methodology:

Does the direct distribution methodology provide for the direct distribution credit issuance process to be initiated by the later date of September 30, 2002 or after the State completes the issuance of early reduction credits? 40 CFR 51.121(e)(3)(iv)(B)(1)

Does the direct distribution methodology provide for completion of the process by no later than May 1, 2003? 40 CFR 51.121(e)(3)(iv)(B)(2)

___(i) Does the direct distribution methodology ensure that credit is issued only if the source demonstrates all of the following:

1. that achieving compliance would create undue risk, and
2. that early reduction credits could not be generated or acquired. 40 CFR 51.121(e)(3)(iv)(B)(3)

___(j) Does the direct distribution methodology provide the public opportunity to comment, through a public hearing process, on the appropriateness of allocating compliance supplement pool credits to a source? 40 CFR 51.121(e)(3)(iv)(B)(4)

2. Enforceable Measures for Control

2.1 Does the State include each of the following with respect to each of the control measures the state has elected to implement:

- ___ (a) the enforceable emission limit, technology requirement, or specific measure for each source;
- ___ (b) projected activity level for each source or group of sources (not required for any category with an aggregate mass emissions cap or equivalent);
- ___ (c) other factors necessary to calculate the effect of the control requirements,
- ___ (d) emission rate & activity level measurement and emission estimations protocols,
- ___ (e) reporting protocols for emission limit, activity level, and emissions,
- ___ (f) enforcement mechanisms;
- ___ (g) penalties for exceeding emission limits or failing to install or operate control technologies or carry out compliance measures;
- ___ (h) provision for each control measure to be implemented by May 1, 2003? 40 CFR 51.121(b)(1), 51.121(f)(1), and 51.121(i)

If the SIP submittal controls fossil fuel fired NO_x sources serving electric generators with a nameplate capacity greater than 25 MW or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr:

2.2 Does the SIP submittal require one of the following for these sources:

- (a) NO_x mass emissions cap, in tons/ozone control season;
- ___ (b) NO_x emissions rate limit (lbs NO_x/mm BTU) assuming maximum operating capacity (rated capacity [BTU/hr] and full seasonal operation [hours/5 month ozone control season]) for purposes of estimating NO_x mass emissions from each source; or
- ___ (c) any other regulatory requirement which the State demonstrates to EPA provides equivalent or better assurance than (a) or (b) above that the State will comply with its NO_x budget in the 2007 ozone control season? 40 CFR 51.121(f)(2)(i)

2.3 Does the SIP submittal controlling these sources require and provide enforceable

mechanisms to assure that collectively emissions from all such sources (including new or modified units) will not exceed the aggregate mass emissions projected by the State for 2007 for that category in any ozone control season beginning in 2003? 40 CFR 51.121(f)(2)(ii)

- 2.4 Does the SIP submittal controlling these sources require all such sources to comply with 40 CFR part 75, subpart H, monitoring requirements? 40 CFR 51.121(i)(4)

If the SIP revision contains any transportation control measures:

- 2.5 Does the revision comply with 40 CFR 51.213? 40 CFR 51.121(i)(3)

3. Legal Authority

3. Does the SIP revision have fully adopted state rules/regulations adequate to prohibit NO_x emissions in excess of the State's budget with compliance dates no later than May 1, 2003? 40 CFR 51.121(b)(1) and 51.121(f)(1)

- 3.2 Does the revision provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records and to periodically report to the State (a) information on the amount of NO_x emissions from their sources and (b) other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures? 40 CFR 51.121(f)(1)(i) and 51.121(i)(1)

- 3.3 Does the revision comply with 40 CFR 51.212 (regarding testing, inspection, enforcement, and complaints)? 40 CFR 51.121(i)(2)

- 3.4 Does the revision contain adequate procedures for handling control measure violations? 40 CFR 51.121(f)(1)(ii) and 51.121(i)(2)

- 3.5 Does the revision designate agency responsibility for enforcement of implementation? 40 CFR 51.121(f)(1)(iii) and 51.121(f)(1)

- 3.6 Does revision show that the State has legal authority to carry out the revision, including authority to:

- ___ (a) adopt emission standards and limitations and any other measures necessary for attainment and maintenance of the State's NO_x budget;
- ___ (b) enforce applicable laws, regulations and standards, and seek injunctive relief;
- ___ (c) obtain information necessary to determine compliance with applicable control measures, including authority to require record keeping and to make inspections and conduct tests of air pollution sources;
- ___ (d) require owners or operators of stationary sources to install, maintain and use emissions monitoring devices and make periodic reports to the State on the nature and amounts of emissions from such stationary sources; and
- ___ (e) make such data available to the public as reported and as correlated with any

applicable emissions standards or limitations? 40 CFR 51.121(j)

3.7 Does the SIP revision specifically identify and provide copies of the laws or regulations which the State determines provide the authorities described above (or provide citations for those laws or regulations)? 40 CFR 51.121(k)(1)

3.8 Does the SIP revision comply with the general plan requirements of § 51.240? [*§ 51.240 requires that each State implementation plan must identify organizations that will participate in developing, implementing and enforcing the plan and the responsibilities of such organizations. The plan shall include any related agreements or memoranda of understanding among the organizations.*] 40 CFR 51.121(l)(2)

3.9 Does the SIP revision comply with § 51.280 (regarding resources)? 40 CFR 51.121(m)

4. Compliance Dates and Schedules

4.1 Does the revision contain a legally enforceable compliance schedule setting forth May 31, 2004 as the date by which all sources must be in compliance with any applicable requirement that is adopted by the State to meet its budget? 40 CFR 51.121(b)(1)(ii). The revised date is due to a Court decision.

5. Monitoring, Record keeping and Emissions Reporting

5.1 Does the SIP revision comply with the data availability requirements of § 51.116? [*§51.116 requires the State to retain all detailed data and calculations used in the preparation of the revision and make them available for public inspection and submit them to the Administrator at her request. Also, each plan must provide for public availability of emission data reported by source owners or operators or otherwise obtained by the State. Such emission data must be correlated with applicable requirements.*] 40 CFR 51.121(h)

5.2 Does the revision provide for State compliance with the reporting requirements set forth in section 51.122? This would include annual reports starting in 2003, triennial reports starting in 2002 and a 2007 report, in accordance with the requirements of section 51.122. 40 CFR 51.121(o)

5.3 Does the revision include mechanisms for the State to obtain from sources the data needed for the State to report emissions information to EPA in accordance with section 51.122 (note that for large EGUs or non-EGUs this requirement may be satisfied by direct submission of data from the source to EPA)? 40 CFR 51.121(f)(1)(i) and 51.121(i)(1)

6. Trading Rule

If the SIP revision contains a trading rule:

6.1 Starting with the 2004 control season, does the SIP trading rule limit the use of any

banked emission reduction credits or emission allowances beyond a predetermined amount as calculated by one of the following approaches:

___ (a) the SIP trading rule prohibits sources from using banked emission reduction credits or allowances for compliance in excess of 10 percent of the source's allowable ozone season NO_x emissions at a rate less than 2 credits or allowances for every 1 ton of emissions; or

___ (b) the SIP trading rule limits the use of banked emission reduction credits or emission allowances beyond a predetermined amount as calculated by the approach in section 51.121(b)(2)(ii)(E)(1)? 40 CFR 51.121(b)(2)(ii)(E)

If the State wants to participate in the NO_x Budget Trading Program:

6.2 Is the State's SIP trading rule consistent with part 96 in one of the following ways:

___ (a) Did the State adopt by reference part 96 with no changes?

___ (b) If the State did not adopt part 96 by reference, is the State's SIP trading rule substantively identical to each provision of part 96?

___ (c) Is the State's SIP trading rule substantively identical to each provision of part 96 except in the following respects (any or all of the following may be checked):

___ (i) the State's SIP trading rule includes smaller electric generating units and/or smaller non-electric generating boilers, turbines and combined cycle units than the size criteria thresholds set forth in 40 CFR 96.4(a);

___ (ii) the State's SIP trading rule includes source categories other than electric generating units and non-electric generating boilers, turbines, and combined cycle units as defined in 40 CFR 96.2;

___ (iii) If yes, are these additional source categories able to comply with all the part 96 requirements including monitoring and reporting ?

___ (iv) the State's SIP trading rule does not include the individual unit opt-in provision set forth in subpart I of 40 CFR part 96;

___ (v) the State's SIP trading rule does not provide the 25 ton/season exemption set forth in 40 CFR 96.4(b);

___ (vi) the State's SIP trading rule does not allow early reduction credits;

___ (vii) the State's trading rule allows early reduction credits using an alternative methodology from that described in 40 CFR 96.55(c) (and still satisfies the early

reduction credit criteria described under the heading of Budget Demonstration and in 40 CFR 51.121(e)(3));

__ (viii) the State's SIP trading rule describes a different methodology for allocating allowances from that set forth in subpart E of 40 CFR part 96 while still ensuring that the number of allowances issued does not exceed the State trading program budget and that new sources are required to hold allowances;

__ (ix) the State's SIP trading rule issues allocations for periods different from that set forth in 40 CFR 96.41 while still ensuring that allocations are issued by April 1 of each year three years prior to the relevant control season? 40 CFR 51.121(p)

- __ 6.3 Does the SIP submittal contain unit allocations for the 2003 ozone control season? 40 CFR 96.41(a)
- _ 6.4 Does the SIP revision show that the State has the legal authority to adopt the trading rule and to implement its responsibilities under such regulations? 40 CFR 51.121(p)(1)(i)
- _ 6.5 Does the SIP revision accurately reflect the NOx emissions reductions to be expected from the State's implementation of the trading rule? 40 CFR 51.121(p)(1)(ii)